IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Crl. Jail Appeal No. 264 of 2001
(Old No. 1656 of 1993)

Date of decision: 17th December, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice Rajesh Tandon.

- Whether the order/judgment should be sent to the reporters for reporting?

- Whether the reporters be allowed to see the judgment?

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Crl. Jail Appeal No. 264 of 2001
(Old No. 1656 of 1993)

Bhopal S/o Jagri,
R/o Rani Majra,
Police Station Pathri,
District Haridwar. ------- Appellant

Versus

State ------ Opposite Party

Mr. K.S. Verma, Amicus Curiae for the appellant.
Mr. D.K. Sharma, Government Advocate for the State.

Coram: Hon'ble V.S. Sirpurkar, C.J.,
Hon'ble Rajesh Tandon, J.

Date: 17th December, 2004

(Per Hon'ble the Chief Justice)

1. This is an appeal by the accused Bhopal against his conviction for the offence under Section 302 I.P.C. on the allegation that in the night between 15th & 16th May, 1989, he committed the murder of his brother Sumer Chandra (deceased). Bhopal was convicted by the Sessions Judge, Haridwar vide judgment dated 21st June, 1990, against which, there was an appeal filed in the year 1993 before the Allahabad High Court, which was transferred to this Court in the year 2001 and so re-numbered as CRJA No. 264 of 2001.

2. The prosecution story is in the extremely narrow conspicuous. The accused Bhopal was a kind of an outlaw, who used to do nothing, but used to stay with his father and mother Smt. Mungia. On 16.05.1989, a report came to be made to Police Station Pathri, District Haridwar, in which, it was stated by Smt. Mungia, the mother of the accused Bhopal that the she had two sons, namely, Sumer Chandra (deceased) & Bhopal (accused) and Sumer Chandra (deceased) used to live separately with his wife and children, while Bhopal (accused) was a kind of vagabond person, who used to beat her and his father also. It is further stated in the report that on that night while Sumer

Chandra (deceased) and his children were sleeping in front of his hut, at about 12 or 1'O Clock, she heard the shouts of Sumer Chandra's children and therefore, she went towards Sumer Chandra's house, where she saw her son Bhopal (accused) running in her direction, who was also armed with a *Gandasa.* It is further suggested that she created a din and asked the children, at that time, the children told that Bhopal (accused) had run away after he had injured Sumer Chandra (deceased) with *Gandasa.* It has also come in the report that Bhopal (accused), at that time, was not home. This report seems to have been written by one Yashpal Singh and bears the thumb mark of Mungia.

3. On this, it seems that the further investigation ensued. The police came on the spot, prepared the inquest report, also seized the body and sent the body for post-mortem. The post-mortem was conducted by Dr. Yashwant Singh Bisht, who opined that the dead body had extensive pre-ante mortem injuries; they were incised wounds etc. and that Sumer Chandra (deceased) had died a death due to those injuries. We are not concerned with the injuries because it was never and before us also, it is not contested that he died of the injuries or that he had died in the night in between 15th & 16th May, 1989. The Investigating Officer also took the search of the hut, where Bhopal (accused) used to live with his parents and also found a bloodstained *Gandasa* there. He also seized some other incriminating articles there. He also recorded the statement of Raghuveeri, the wife of the deceased Sumer Chandra on 16th May, 1989, itself and after completing the investigation, he proceeded against Bhopal (accused), who was, then, absconding. The Investigating Officer, it seems, was able to nab the accused Bhopal only when he was regularly arrested. On the basis of the investigation, the prosecution field a charge sheet against the accused Bhopal.

4. The prosecution, in its support, examined Smt. Mungia (PW1) & Raghuveeri (PW2), who were the relation witnesses, while Yashpal Singh (PW3) was examined, who proved the First Information Report

since he was the scribe thereof. Dr. Yashwant Singh Bisht (PW4) has also been examined to support the theory that the deceased died a homicidal death. The other three witnesses are the police witnesses, out of whom, R.S. Sarashwat (PW7) and Phool Singh (PW8) are the Investigating Officers.

5. The defence of the accused Bhopal was that of denial. He claimed that when he had gone to the hut at 12 to 12:30, two other persons, who had covered their heads, had came out of the hut of Sumer Chandra (deceased) saying that, first Bhopal should be taken care of and therefore, he ran away. In short, his defence was that of denial. At the stage of trial, Smt. Mungia (PW1) turned hostile, while Raghuveeri (PW2) stuck to her story and claimed that when she woke up after bearing the din of her children and when she came out, she saw her brother-in-law Bhopal (accused) armed with *Gandasa* and she also saw that her husband Sumer Chandra (deceased) was lying there in the injured state. She stuck up to her story even before the Court, however, Mungia (PW1) turned completely hostile and also denied even having made a report or denied having stated anything to Yashpal Singh (PW3). She, in fact, showed complete ignorance about the whole story. However, in her evidence, she did suggest that on that day Bhopal (accused) was in her hut only. Accepting the evidence of Raghuveeri (PW2) and further accepting the fact that Sumer Chandra (deceased) had met a homicidal death and relying on the evidence of Rs. Sarashwat (PW7), the Sessions Judge has convicted the accused Bhopal of the offence under Section 302 I.P.C. It is against this judgment that the present appeal is directed.

6. Mr. K.S. Verma, the learned Amicus Curiae appearing on behalf of the defence, very earnestly argues that the story of Mungia (PW1) was liable to be disbelieved and her evidence was liable to be thrown out completely since she was turned hostile. He, then, invites our attention to the evidence of Raghuveeri (PW2), who had said in her evidence and more particularly, in cross-examination that she was

lying without consciousness for two days. The learned counsel, therefore, suggests that is was not possible for her to have made any statement on 16th may, 1989 as was the claim of the prosecution and therefore, her version could not be believed. The learned counsel also points out that the so-called *Gandasa,* which was allegedly blood stained, was never sent to the police for being examined. The learned counsel, lastly, suggested that this was a case, where Bhopal (accused), who was a vagabond character, merely because of his vagabond tendencies, was being falsely implicated by the Investigating Agency as the murder could have been committed by anybody else.

7. We have seen the evidence in details. Mungia (PW1), who was the maker of the First Information Report, in her evidence, accepts that she saw the dead body of her son Sumer Chandra lying on the cot. She, however, accepts that Bhopal (accused) was inside the house. She, then, categorically denied that she saw Bhopal (accused) running away after injuring Sumer Chandra (deceased). She also denied that there was ever ay alarm raised by the children of Sumer Chandra (deceased). She accepts that she had got the report written through Yashpal Singh (PW3), however, she denies that she ever went to the Police Station with that report. She, however, expressed that she did not know who carried that report to the Police Station. She also accepted that she had put her thumb impression on the report, however, she asserts that she had not told Yashpal Singh (PW3) anything while writing the report. In her cross-examination on behalf of the prosecution, she mainly denied the portions contained in the First Information Report.

8. It used to be the earlier legal position that his evidence of the witness, who had turned hostile, was liable to be thrown in toto. However, this situation has now changed and the Court can rely even on the portion of the evidence of the witness, who has turned hostile. This witness has, at least, stated that at the time, when she saw the

dead body of her son Sumer Chandra, she had seen Bhopal (accused), who was inside the house. Therefore, it is not as if Bhopal's presence was altogether denied from the spot.

9. When we see the evidence of Yashpal Singh (PW3), he has categorically stated that a report was scribed through him by Mungia (PW1) and he had written exactly whatever Mungia (PW1) had told him. This suggests that the claim of Mungia (PW1) that she did not, at all, said anything to Yashpal Singh (PW3) and she did not make the report; goes completely against her own evidence and the evidence of Yashpal Singh (PW3). She has, undoubtedly, accepted the thumb mark and the fact that she had asked Yashpal Singh (PW3) to report something. We can quite understand the predicament on the part of Mungia (PW1) because she had lost one son and was posed to depose against another one. However, it cannot be denied that she had actually asked a report to be made to Yashpal Singh (PW3) and we fail to understand that if she has not stated anything to Yashpal Singh (PW3), how Yashpal Singh (PW3) could come to know about the ghastly murder so as to be able to make a report to the Police Station. It is, therefore, obvious that almost immediately after the incident, Mungia (PW1) told Yashpal Singh (PW3) and disclosed the name of Bhopal (accused) as an assassin. This immediate disclosure of Mungia (PW1) to Yashpal Singh (PW3), who on the basis of it made a report, is extremely significant.

10. Yashpal Singh (PW3) has also stated about the recovery of *Gandasa* from the house of Bhopal (accused) on its search. He, however, has not stated regarding the said *Gandasa* being blood stained. He had also been a Panch witness on the seizure of the blood stained earth. We will go to the subject of *Gandasa* later on, however, from the evidence of this witness, it is clear that he has been a scribe of a report made my Mungia (PW1) and he had written the report as per Mungia's disclosures made to him. This fact is also accepted by Mahendra Singh (PW5), who was present in the Police Station Pathri,

when he had received the report from Yashpal Singh (PW3). All this evidence goes to suggest that Mungia had made a report (Ex. Ka. 1), in which she had specifically named Bhopal (accused).

11. It is, on this backdrop, that we have to appreciate the evidence of Raghuveeri (PW2), who supported the prosecution story to the hilt. She specifically disclosed in her evidence that she was awakened by the alarm raised by the children, who were sleeping besides Sumer Chandra (deceased) and that when she went, accused Bhopal was standing with a *Gandasa* and that the neck of her husband was cut and one hand was also cut. When we see the injuries in the post-mortem report, her version is corroborated as the first injury is son the neck while the second injury is on the hand. This witness, then, asserted that it was Bhopal (accused), who had committed that act and that she lost her consciousness. She also stated that number of persons had come there, who had seen Bhopal (accused) running away. In her cross-examination, there is hardly anything worth the name. A support was tried to be created by getting out from her that no report was ever made against Bhopal (accused). The witness had very specifically stated that she had not seen Bhopal (accused) dealing the blow of *Gandasa,* but he was standing with a *Gandasa* near her husband. In our opinion, this goes to show that the witness was truthful. She could have easily imagined something and stated against Bhopal (accused), but she was truthful enough to state that she had not seen Bhopal (accused) dealing the blow, however, Bhopal (accused) was standing with a *Gandasa* near her husband and thereafter, he ran away. In our opinion, this creates all the more credence in the evidence of the witness and would make her testimony acceptable.

12. Mr. K.S. Verma, the learned counsel tried to suggest that Raghuveeri (PW2) has not stated in her statement that she had seen her brother-in-law Bhopal (accused) sanding with *Gandasa.* We have seen the evidence of Phool Singh (PW8), who had recorded her statement. We do not see anything to suggest in that evidence that

Raghuveeri (PW2) had not made any such disclosure. In short, the defence was only taking the post-shots at this witness by throwing all kinds of suggestions to her. In their suggestion, the defence went on to the extent of suggesting that she was wanting to stay with Bhopal (accused) and since, her mother-in-law had refused, she was giving the evidence. The suggestion, to say the least, is absurd and was like rubbing salt on her wounds. There is absolutely no cross-examination in so far as her assertion that she had seen Bhopal (accused) immediately on hearing the alarm raised by her children is concerned. She, very categorically, admitted in her cross-examination that she cannot state as to what her mother-in-law had seen. She gives a proper explanation of this that she was afraid after seeing the ghastly incident. A great support was tried to be taken from the unguarded admission of the witness that she had not stated anything to anybody.

13. We have seen the judgment of the learned Sessions Judge, who has very correctly appreciated the evidence of this witness Raghuveeri (PW2) and has stated that her contention, *main behosh ho gayi thi* I had lost consciousness, has to be looked properly and it does not mean that she had completely lost her consciousness so as not to be able to give any statement to the police. Phool Singh (PW8) had specifically stated that he had recorded the statement of this witness on 16.05.1989 and there is hardly any cross-examination worth the name to dispute this. In our opinion, the evidence of Raghuveeri (PW2) fully establishes, by itself, that it was accused Bhopal alone, who was responsible for the injuries and eventually, the murder of Sumer Chandra (deceased). In fact, the evidence of Raghuveeri (PW2) is fully corroborated by the evidence of Mungia (PW1), who has accepted the presence of Bhopal (accused) in that night. We cannot, at the same time, ignore the fact that Mungia (PW1), who had also seen Bhopal (accused) running with *Gandasa* as per her report, had taken the name of the accused Bhopal immediately before Yashpal Sing (PW3), who, on that basis, prepared a report and submitted the same. In our opinion, these circumstances, by themselves, are enough

to establish the guilt beyond reasonable doubt against Bhopal (accused). We have seen the findings of the Sessions Judge, who has very categorically and painstakingly appreciated the evidence of this witness. We confirm the finding in so far as the appreciation of evidence of this witness is concerned.

14. As if all this is not sufficient, it is obvious that Bhopal (accused) had absconded. He has been shown to be a resident along with his mother. There are number of such references in the evidence of Mungia (PW1) as also in the evidence of Raghuveeri (PW2). It is obvious that from 16.05.1989 he was absconding till he was arrested on 10.07.1989. There is absolutely no explanation given by Bhopal (accused) as to where he was. Fortunately, he has been specifically put this circumstance that he was arrested only on 10.07.1989. He has accepted that he was arrested by the Investigating Officer after 1½ months from his house. He has also been specifically asked in question No. 12 that the Investigating Officer tried to search him, but he was not at home. Very interestingly, he asserted that he was at home. In questions No. 13 & 14, it was specifically put to him that he was absconding and therefore, the Investigating Officer Mr. R.S. Sarashwat (PW7) tried to institute proceedings under Section 82 and 83 of the CrPC against him. He has simply denied. He has given a round about explanation that two persons, who had covered their heads, were interested in assaulting him and therefore, he had ran away. This answer goes to suggest that Bhopal (accused) had actually absconded. The Sessions Judge, in our opinion, has rightly held this fact as a circumstance against Bhopal (accused).

15. Lastly, we take up the circumstance of the recovery of blood stained *Gandasa*, which was recovered. In so far as the aspect of the *Gandasa* being blood stained is concerned, the Investigating Agency has committed a ghastly mistake in not sending the same for the examination by the Serologist. But the fact remains that *Gandasa* was, in fact, recovered from his house. In our opinion, the recovery of

Gandasa, by itself, would not mean anything against the accused because *Gandasa* is not a weapon, which is not found commonly. It is an agricultural instrument and as such, it's being found at somebody's place would not, by itself, create any circumstance, much less an incriminating circumstance against an accused.

16. However, the evidence of Raghuveeri (PW2), the evidence of Mungia (PW1), the fact that Mungia (PW1) disclosed and immediately took the name of Bhopal (accused) with Yashpal Singh (PW3) & eventually a report was immediately made to the Police Station and lastly, the fact regarding the absconding of accused Bhopal; all would go to suggest that Bhopal was the author of the crime. We do not think that the Sessions Judge has, in any way, faulted in recording his findings or in the appreciation of evidence.

17. We, therefore, do not find any force in the appeal and we, accordingly, dismiss the appeal. We, however, appreciate the efforts by Mr. K.S. Verma, Amicus Curiae, who painstakingly argued his case.

(Rajesh Tandon, J.) **(V.S. Sirpurkar, C.J.)**

Dt.: 17.12.2004
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